

November 27, 2009

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FOR IMMEDIATE RELEASE

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 35787-2008

WENDY KNOX and RICHARD DOTSON,)

Plaintiffs-Appellants,)

v.)

STATE OF IDAHO, ex rel. C. L. OTTER,)

Governor; BEN YSURSA, Secretary of State;)

and LAWRENCE WASDEN, Attorney)

General,)

Defendants-Respondents.)

Pocatello, September 2009 Term

2009 Opinion No. 144

Filed: November 27, 2009

Stephen W. Kenyon, Clerk

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for Bingham County. The Hon. Darren B. Simpson, District Judge.

The judgment of the district court is affirmed.

Thomsen Stephens Law Offices, PLLC, Idaho Falls, for appellants. Jason T. Wood argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondents. Clay R. Smith, Deputy Attorney General, argued.

In a unanimous opinion issued today, the Idaho Supreme Court affirmed the district court's dismissal of this case. This case was an attempt to remove tribal video gaming machines from the Fort Hall Indian Casino on the Shoshone-Bannock Tribes Reservation. Wendy Knox and Richard Dotson appeal from an order dismissing their complaint, which asked for a declaratory judgment that Idaho Code sections 67-429B and 67-429C violate article III, section 20 of the Idaho Constitution. Idaho Code sections 67-

429B and 67-429C were passed via ballot initiative as Proposition One in the November 2002 general election. Knox and Dotson claim that these code sections, which permit Indian tribes to conduct gambling using tribal video gaming machines and set forth the mechanism for tribes to amend their Tribal-State Gaming Compacts with the State of Idaho, violate the Idaho Constitution's prohibition on gambling within the State of Idaho.

The district court dismissed the complaint for lack of standing. Knox and Dotson alleged their injury in fact was that they became compulsive gamblers who habitually gambled at Fort Hall Indian Casino near Blackfoot, Idaho. As a result of their gambling addictions, they lost tens of thousands of dollars, a home and job, and endured family strife and emotional distress. The district court ruled that even if Knox and Dotson could prove that Idaho Code §§ 67-429B and 67-429C violate the Idaho Constitution, a judgment declaring that these statutes were unconstitutional would not result in a substantial likelihood that the tribal video gaming machines would be removed from the Fort Hall Casino.

The Idaho Supreme Court held that the case of *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), was res judicata on the issue of the legality of the tribal video gaming machines at the Fort Hall Indian Casino. In that case, the State of Idaho sought to challenge the same gambling at issue in this case. The State of Idaho did not raise the issue of the constitutionality of Idaho Code §§ 67-429B and 67-429C in that federal case. Thus, even if Knox and Dotson could prove those statutes were unconstitutional, the State of Idaho would be precluded from raising the issue again in any subsequent federal declaratory judgment action to have the gaming provisions of the Compact declared void as illegal. Similarly, the Court held that in light of the decision of the Ninth Circuit Court of Appeals in *Shoshone-Bannock Tribes*, holding that tribal video gaming is legal and is permitted by the Tribal-State Gaming Compact, there is not a substantial likelihood that federal authorities would seek to commence criminal prosecutions, even if Knox and Dotson prevailed in this action.